DOCUMENT RESUME

ED 149 384 CS 501 885

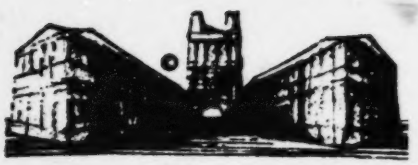
AUTHOR	Keefe, Pat
TITLE	State Open Meetings Activity.
INSTITUTION	Freedom of Information Center, Columbia, Mo.
REPORT NO	FOI-378
PUB DATE	Sep 77
NOTE	8p.
EDRS PRICE	MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS	*Civil Liberties; *Court Litigation; Literature Reviews; News Media; News Reporting; *Social Action; Social Change; State Agencies; *State Government; *State Legislation
IDENTIFIERS	Freedom of Information; *Public Access; *Sunshine Laws

ABSTRACT

Not all court litigation and legislative activity since 1974 has favored open meetings at the state level, but there seems to be a trend toward increasing the public access allowed by state courts and legislatures. This paper reviews state supreme court decisions, lower court rulings, and state legislative activities that have affected the interpretation of state "sunshine laws." The paper concludes that, in spite of increased legislative and judicial activity concerning open meetings, many frustrating situations still confront reporters attempting to cover meetings of public bodies. (RL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED149384



SCHOOL OF JOURNALISM, UNIVERSITY OF MISSOURI AT COLUMBIA
SEPTEMBER, 1977

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

FREEDOM OF INFORMATION CENTER REPORT NO. 378

STATE OPEN MEETINGS ACTIVITY

This report was written by Pat Keefe, an M.A. candidate at the University of Missouri School of Journalism.

I. Introduction

Access to public meetings on the federal level is a relatively new phenomenon, with the "Government in Sunshine Act" just recently going into effect (March 12, 1977). But the development of open meetings legislation on the state level is not quite as young. The development of state open meetings laws has been a phenomenon of the past 25 years, with members of the press playing an influential role in promoting access legislation.[1] (This is not to suggest, however, that the concept of open government, through access to public meetings, did not exist before 1950. In fact, the struggle for open government can be traced back to common-law England and colonial America.)[2]

Reasons and rationale for such legislation have been enunciated in different ways, but the basic ideas appear to be the same. The most obvious, and to some the most compelling, reason for the adoption of open meetings laws is to enable people to know what their governmental agents are doing.

Expanding on this concept brings to the fore the contention that a truly democratic electorate, which this country strives to maintain, vitally needs to be informed. In other words, our society firmly believes that the right to participate in our democracy includes the right to be informed.[3] Government operates (or should operate) not for the politician but for the people. Through open meetings laws, citizens theoretically are able to participate in their destinies and govern themselves. These concepts are fundamental to democracy.[4] The Memphis *Commercial-Appeal* put (3-27-75) it a bit more tersely: "Those who think it is nobody else's business how they conduct public business have no business in public office."

Sunshine laws are not meant to apply solely to the press but rather to all citizens. However, for various reasons much of the public is unable to attend public meetings and therefore the press takes it upon itself to try to attend in the people's behalf, so that it might help the electorate achieve self-government. Consequently, the press has played a prominent role in judicial and legislative activities concerning access to public meetings.

In 1974 the Freedom of Information Foundation, Columbia, Mo., published a report in which John Adams, dean of the school of journalism, University of North Carolina, presented an overview of state open meetings laws as they stood at that time. Adams rated the 47 states which then had open meetings statutes on a scale from one to eleven according to a set of criteria indicating openness. The scores in the study ranged from a perfect 11 for Tennessee to a low of one assigned to statutes in Maryland and Rhode Island. Since that time, there has been an increase in the amount of activity, both legislative and judicial, in this area so that some of his information is no longer valid.

This paper will point out some of the judicial and legislative activity since the 1974 Adams report. It is difficult to present a complete update, since the same reason for inaccuracy and incompleteness that Adams cited must also be pleaded here: the amount of activity in this area blurs the status of the law and results in frequent and extensive change.[5]

A review of judicial activity will focus first on a group of state supreme court cases and then on some lower court decisions. Cases which reached the state supreme court level indicate, in general, an attempt by the courts to discern the legislative intent of the statutes rather than relying on the literal wording of the law. These interpretations work in favor of access advocates in some cases and against them in others. But either way, this accent on legislative intent by the courts can be viewed as an attempt to apply the laws in the way in which they were intended and to close up loopholes that evaders use for their own advantage and not in the interest of the public's right to know.

Following the look at lower court activtity, some general legislative activity in the various states will be reviewed. All of this will be done with the hope of calling to attention the direction the freedom of information movement is taking in the area of state open meetings.

Summary: The freedom of information movement appears to be more on the move in the states every month. Not all suits filed or legislative activity taken favor open meetings, but there seems to be a trend toward increased access in state courts and legislatures since 1974.

Additional copies: 25c each.

CS 501 .I25

II. State Supreme Court Cases

A. Legislative Intent

In order for any law to be worthwhile it must be used. It needs application and enforcement and sometimes, very importantly, it needs judicial interpretation. Only in this way can people be sure what a law means and what its limits are.

In the area of open meetings, some access statutes give the press, or anyone else, the right in certain situations to seek judicial relief when they are denied access to information to which they are legally entitled. In other words, these statutes give the right to sue for access to public news.[6] But even though the right is present, it is not always easy for a reporter, editor or news director to choose the route of the courts to get what he wants. This is particularly true in the case of the individual reporter, for without the backing of his publisher, it is highly unlikely that he will use his own time and money to exercise his right of judicial relief. The reasons for this are fairly obvious: "litigation is slow, costly and makes enemies."[7] Therefore, editors often take court action only as a last resort.

This is not to say that there are not instances where the media has decided to challenge an open meetings violation. In fact, there seems to be an increase in the amount of court action in this area, and the course of court decisions around the country continues to go in the direction of open meetings. In other words, when the newspaper or broadcast station does decide to challenge in the courts, the outcome in many cases favors open meetings.

The Tennessee open meetings law, which received a perfect score of 11 in the Adams report, was the focus of such an interpretation. The new law in that state was being contested in the courts to determine whether it was unconstitutional on the grounds that it was too vague. That case reached the Tennessee Supreme Court and the ruling that came down in February, 1976, emphasized the intent of the statute.

The facts involved a tenured teacher, James Dark, who was fired by the Metropolitan Board of Education of Nashville on charges of neglect of duty and conduct unbecoming a teacher. Dark sought judicial review in the Chancery Court of Davidson County asserting, among other things, that the decision to fire him was reached at a closed session in violation of the Tennessee open meetings law. The chancery court agreed that the board was a governing body and had violated the law.

The board appealed to the state supreme court, claiming that the law was unconstitutional because, among other reasons, it was too vague. The appeal claimed the terms "governing body" and "public body" in the statute were undefined and that men of common intelligence would have to guess at their meaning and would differ as to their application. The appellants continued:

> More specifically it is stated that governing body and public body are imprecise terms subject to conjecture and will be interpreted differently by the courts of this state until these ambiguous terms are either defined or the Act declared void by this Court.[8]

In ruling against the appellants, the court noted:

> In the construction of a statute we must seek to ascertain the *intention* of the Legislature . . . and should look to the entire Act and give consideration to the *purpose, objective* and *spirit* behind the legislation.[9] (Emphasis added.)

In rendering its opinion, the Tennessee court did not find any uncertainty in the disputed terms and therefore ruled against the appellant, noting that the spirit and intent of the legislation was clearly against the body of the appeal. The court said: "We note that the terms are sufficiently clear to enable appellant to stipulate it is a governing body as defined by the Act."[10]

This Tennessee Supreme Court interpretation of intent is similar to a few cases that have reached the Arkansas Supreme Court recently. One of them, *Arkansas Gazette Co. v. Pickens*, involved a suit brought by the *Gazette* after a reporter was excluded from a University of Arkansas Board of Trustees committee meeting. The circuit court ruled that, according to the statute, committees or subdivisions of governing bodies or boards were not subject to the Arkansas Freedom of Information Act. The state supreme court decided otherwise.

The court noted that the sole question involved in the case was whether committees of a board which is itself subject to the provisions of the act are exempt from such provisions because they are subgroups. The court conceded that, as the appellees pointed out, the specific wording of the statute does not mention committees, but said the question was whether the legislature's intent was to include subgroups. The court said:

> It clearly appears that the General Assembly, in referring to public meetings attempted to "cover the field," . . . and we attach no particular significance to the fact that the word committees is not specifically enumerated; in other words, it was the intent of the legislative body that *public business* be performed in an open and public manner.[11]

The appellants raised the point in the case, and the court agreed, that if subgroups were exempt from open meetings law, then all important issues would be considered in committee meetings, thereby circumventing the purpose of open meetings legislation. This ruling and the Tennessee court decision give important indications of where the courts stand on the "intent" of legislation rather than only the literal wording.

Another very recent Arkansas case, involving the barring of a Jonesboro *Sun* reporter from a meeting of the Jonesboro School District Board discussing possible accreditation problems, resulted in a state supreme court ruling in favor of access. The group appealing the case, the North Central Association of Colleges and Schools, argued "that since it was a private, nonprofit organization, not authorized or created by state statute, and with no official status in Arkansas, it did not come under the Freedom of Information Act."[12] The Supreme Court of Arkansas, in ruling against the appeal, said: "It is well settled that the Freedom of Information Act was enacted wholly in the public interest and is to be liberally interpreted to achieve its purpose."[13]

In the same vein, the court in *Pickens* had concluded its decision by saying:

> . . . [W]e adopt the language of the Florida Supreme Court in *Board of Public Instruction of Broward County v. Doran, Fla.*, 224 So.2d. 693,

which succinctly, but accurately, sets forth our own views in the present litigation: "Statutes enacted for the public benefit should be interpreted most favorably to the public."[14]

Likewise, the Tennessee court had said:

> When a constitutional attack is levied on a statute, we are required to indulge every presumption in favor of its validity and resolve any doubt in favor of, rather than against, the constitutionality of the Act.[15]

Another Arkansas Supreme Court decision in this area found that a reporter of the El Dorado Broadcasting Company should have been admitted to a conference held in the mayor's office. The appellants, the mayor and the city council, claimed that the conference was a meeting involving less than a quorum of the city council, so that no official action could be taken, only discussions held. They also claimed that they were not a "committee" subject to the *Gazette v. Pickens* decision and therefore should not be bound by the open meetings statute. In effect, the appellants were hoping, as pointed out by a dissenting judge in the case, that the court would not extend the scope of the state FoI act to an unofficial group of less than a quorum that had met simply for discussion and not to take any official action on any public business.

In deciding this case, *Mayor and City Council of El Dorado v. El Dorado Broadcasting Company*, the Arkansas court turned to a section of the state open meetings law that read in part:

> [A]ll meetings formal or informal, special or regular, of the governing bodies of all municipalities of the State of Arkansas supported wholly or in part by public funds, shall be public meetings.[16]

The court said:

> [S]ince we are required to give the Act a liberal interpretation, we cannot agree with the appellants that it applies only to meetings of officially designated committees. We can think of no reason for the Act specifying its applicability to informal meetings of governmental bodies unless it was *intended* to cover informal but unofficial group meetings for the discussion of governmental business.[17] (Emphasis added.)

Missouri's open meetings statute, adopted in 1973, received its first state supreme court challenge in *Cohen v. Poelker*, a case involving meetings of the St. Louis Board of Estimates and Apportionment. The Circuit Court of St. Louis had issued an injunction forbidding the members of the board to hold secret meetings, as they had done on April 19, 1974. The board members appealed the circuit court action to the supreme court claiming they were exempt from the state open meetings law. Their reasoning was that they were not a governmental entity of constitutional or statutory origin, as provided for in the act. Instead, the board was a creature of the city of St. Louis and its origin was not the constitution or a statute but the city charter. The court did not go along with this reasoning:

> While the board is not, as it contends, of constitutional or statutory origin, it is a "board created by the charter of the city which is a municipal government of constitutional origin."[18]

The court, in a unanimous decision to open the meetings, went beyond the literal wording of the statute, as other courts had done, and looked to the intent of the law. The court said "the General Assembly made clear that *intent* was to prohibit secrecy at all levels. . . ."[19] (Emphasis added.)

Not all state supreme court interpretations of legislative intent have favored opening meetings, however. *Arizona Press Club v. Board of Tax Appeals* was decided by that state's highest court in November, 1976, and referred to the legislative intent of the statute in ruling against the petitioners.

The tax appeals board had decided to meet in closed session to deliberate a case brought by a taxpayer dissatisfied with the cash value placed on his property. The Arizona Press Club felt that such a closed session would be in violation of the state's open meetings law. The exception to the Arizona statute that was focused upon was the provision that the law would not apply to any judicial proceeding. The club contended that the board was a quasi-judicial body and that the intent of the legislature was to exempt only judicial hearings conducted by the courts, not hearings conducted by an administrative agency like the board. They continued that the reference in the statute to judicial proceedings and the omission of any reference to quasi-judicial proceedings made it clear that the latter were not intended to be exempt from the law.

But the state supreme court thought otherwise. The court agreed that judicial power is vested only in the courts but said that it was possible for a quasi-judicial body, like the tax board, to act judicially and therefore be exempt from the open meetings law.

> The procedures prescribed by the statute followed by the Board of Tax Appeals in hearing the parties in open forum, deliberating, writing a written decision . . . follow the classic procedures of an appellate court making a judicial decision. We believe this is a "judicial proceeding" within the meaning of the statute.[20]

Continuing, the court said:

> We do not believe the legislature intended to exempt only court "judicial proceedings" and not administrative agency "judicial proceedings." This would not promote the ends of justice.[21]

The decision was not unanimous and one of the dissenting judges expressed his own interpretation of what the legislature intended by the open meetings statute. His idea of what was meant by "judicial proceedings" was just what it said—that is, "judicial" meant "court." He added:

> There is no hint that the Legislature really meant some quasi-judicial proceeding by an administrative agency. The Legislature drew a broad statute, and it acknowledged that the broad sweep of the statute did not apply to the independent department—the Judiciary.[22]

The dissenting judge further cautioned that for all practical purposes, the decision would exempt many state agencies from the open meetings law, a result he felt was never intended by the legislature.

B. Anti-access Rulings

It was noted above that not all state supreme court decisions in the past few years in the area of open meetings have favored those seeking open meetings. *Pierce v. Lake Stevens School District No. 4*, a state of Washington case, involved the secrecy surrounding a decision not to renew the contracts of certain teachers due to lack of funds. The appellants contended the decision should have been voided since it was reached at an executive session of the board of directors of the school district in violation of the state Open Public Meetings Act of 1971.

The focus, as in the Arizona Press Club case, was again on the matter of a quasi-judicial body. But the difference in this case was that the Washington law had a provision exempting such a body and the question here was whether the board was in fact such a body. The trial court had ruled that the decision not to renew a contract of a teacher was a quasi-judicial matter and therefore exempt from the act. The state supreme court agreed with that ruling, saying:

> We think the trial court correctly construed this act. In deciding whether a teacher's contract shall be non-renewed, school directors perform a function quasi-judicial in nature. That is manifest from the fact that their action is subject to judicial review.[23]

Continuing, the court said:

> It is also a matter between the school district and the teacher and not a matter which has an effect on the public generally or on a particular class or group . . . The appellants have given no reason why the public interest would be served by requiring these matters to be considered in open meetings.[24]

The important point in this case seems to be that the court is putting the burden on the public to prove whether the business being transacted is sufficiently in the public interest to warrant an open session. This is not only a blow to access advocates but is quite unlike other decisions in which the state supreme courts have given a liberal interpretation of the statutes, in favor of the public interest.

Another ruling in favor of secrecy occurred in *WTAR-TV v. City Council of the City of Virginia Beach*. The Virginia television station alleged violations of the state freedom of information act by the city council. The state supreme court ruled against the requested injunctive relief, restraining future violations. The court did agree that since the council had previously violated the act it could be inferred that they would do so again. But an inference is not sufficient reason to issue an injunction, as the court said the ancient presumption is not that a man will violate the law, but rather that he will obey it. (Presumably this holds true even though he has violated the law in the past.) The court attempted to soften its blow when it said:

> We are mindful of the high purpose the Act seeks to promote and we have carefully considered what petitioners call "the futility of having a Freedom of Information Act if there is no method of forcing public bodies to comply with it." Our holding does not render the Act unauthorized or unenforceable; the injunctive relief it authorizes remains available when a cause is properly pleaded.[25]

Again, the burden appears to be on the public to act properly when seeking injunctive relief in the area of open meetings. The Virginia State Code provides three conditions for filing a petition alleging the denial of a right. (In this case the right denied was attendance at a city council meeting.) The conditions are: an allegation of irreparable harm, prevention of future wrongs and apprehension with reasonable probability of a violation.

None of these conditions was met in this case. In the area of open meetings, according to the court, the first condition did not apply. The petitioners were not alleging any future wrongs, according to the court, so the second condition was not met either. As to the third condition, the court said there could be no apprehension with reasonable probability that a violation would occur. Therefore, the court refused to issue the injunction requested by the station, since none of the technical conditions for petitioning relief were met. Here, it seems, the city council escaped openness through a technical provision in the act.

A reporter and the publisher of the Commercial Printing Company also failed in their appeal to the Arkansas Supreme Court seeking a judgment that an executive session held by the state board of corrections violated the state Freedom of Information Act.[26] The supreme court upheld the trial court's judgment that the act had not been violated by the October, 1975, meeting held to consider whether disciplining of certain prison employees was warranted after the death of an inmate. The appellants also sought to have a tape recording of the meeting made public. The court denied that motion, noting that the subject matter of the meeting warranted the closed session.

The Arkansas Freedom of Information Act provides for executive sessions to consider employment, disciplining, demotion or resignation of employees. In this case, no official action was taken in the meeting, only consideration of discipline in accordance with the law, the court said. Any and all official action must be taken in the public view.

The issues of the public's right to know and the protection of an individual's rights met head on in the trial court's refusal to release the tape recording of the closed session. The supreme court agreed that such a refusal was necessary to protect the individuals who were the subjects of the discussion from unfair and/or unwanted publicity.

C. Attorney-client Privilege

A Minnesota Supreme Court ruling in *Minneapolis Star and Tribune Co. v. The Housing and Redevelopment Authority of Minneapolis* extended the attorney-client relationship to the area of open meetings. The newspaper, its executive editor and a reporter sought an injunction prohibiting the public agency from holding closed meetings in alleged violation of the Minnesota open meetings statute. The attorney for the housing authority told the court that it was imperative that he meet with his client in secret session to discuss pending lawsuits involving members of the authority. The court recognized the importance of the relationship but also cautioned:

> We cannot emphasize too strongly that should this exception be applied as a barrier against public access to public affairs, it will not be tolerated, for

> this court has consistently emphasized that respect for and adherence to the First Amendment is absolutely essential to the continuation of our democratic form of government.[27]

It is difficult to interpret the effects of this decision, as access advocates seem to have lost the battle but perhaps won a bit of the war with the state supreme court's warning against abuses.

The court looked to a 1974 case in making its *Star-Tribune* decision. In *Channel 10, Inc. v. Independent School District No. 709*, the state supreme court had recognized the importance of the attorney-client privilege but considered it too broad. For that reason, the court enjoined the Duluth School Board from holding closed meetings involving their attorneys. The court said:

> [I]f any exception is to be made because of an attorney-client relationship, it should be done on a case-by-case basis or at least in a case with a more detailed factual setting than is presented by this record.[28]

The court in the *Star-Tribune* case agreed with this interpretation, saying:

> Clearly the application of the attorney-client privilege in all such cases without guidelines or limitations would be potentially jeopardizing the public's right to be informed as required by the Open Meetings Law.[29]

These few state supreme court decisions cannot begin to indicate the status of all state open meetings laws. But they do give some indication of how the laws are being interpreted in some of the states. The most discernible and significant pattern is the focus on the legislative intent, rather than the literal wording, of the statutes, with many of the courts providing liberal interpretations of the statutes in favor of the public interest and the public's right to know.

III. Lower Court Activity

A digest of lower court decisions in the area of open meetings in the past few years indicates a pattern of favorable results for access advocates. Many of these cases have involved access to city council and local school board meetings. This is logical since those bodies are the source of much news on the local level.

Two 1975 North Carolina decisions exemplify rulings both ways, in favor of and against open meetings. Judge Kenneth Griffin ruled against the Gastonia *Gazette* and its editor, who were seeking access to a city council meeting at which a discussion took place with the city attorney regarding a $36,000 invoice.[30] Not only did the judge grant the council permission to meet in executive session, but he also said that no council member could discuss the proceedings of the meeting nor could reporters attempt to obtain such information. Later that year, Judge Sam J. Ervin III, responding to a suit filed by the Shelby, N.C., *Daily Star*, enjoined the Shelby Board of Alchoholic Beverage Control from holding secret meetings.[31]

The Prescott, Ariz., *Courier* and the Arizona Newspaper Association won a big battle in 1976 when a superior court judge in Yavapai County granted them $10,000 in legal fees and court costs.[32] The suit stemmed from action by the Prescott city council on two occasions in which a *Courier* reporter was denied access to its meetings, held to discuss the legal aspects of out-of-court settlement of four suits against the city.

Fines were also assessed (Milwaukee *Journal*, 11-8-76) in Wisconsin in 1976 when a circuit court judge ordered six members of the Mishicot Village Board to pay $651 in legal costs from their own funds for failing to comply with provisions of the state open meetings law, and in Pennsylvania in 1975 when a state court judge fined the members of the Yardley Borough Council $10 each for barring an interested party from attending a council meeting and for participating in a closed session during which formal action was taken.[33]

Nevada's 1960 open meetings law received its first court test in late 1974 when a Washoe County district judge ruled in favor of the Nevada *State Journal* and the Reno *Evening Gazette* and against a subcommittee of the Reno City Council set up to negotiate new airport leases.[34] Interpreting the law, the court looked to its legislative intent and said:

> It was not the intent of the legislature . . . that appointed official committees . . . could meet in secret session to conduct negotiations . . . leaving only the ultimate step of official action for open meeting.[35]

A Tennessee court of appeals ruled in 1974 that the Williamson County School Board violated the state access law by secretly discussing teacher pay disputes.[36] The suit was filed by a radio station reporter who was refused permission to cover the meeting in Franklin, Tenn.

In the Kansas City area, the Public Service Commission (PSC) has been the subject of much open meetings discussion and activity. In 1974, the Kansas City Star Company was granted a temporary restraining order prohibiting the PSC from holding secret sessions. Then a 1975 decision from the Missouri Court of Appeals, Kansas City District, said (Kansas City *Star*, 9-5-75):

> [T]here is no requirement that the deliberations or conferences of the commissioners of the Public Service Commission be public, or that they express their opinions or votes on any case before it in a public meeting.

Presently, the Missouri PSC is asking (Kansas City *Times*, 1-22-77) the state supreme court to allow it to circulate noncontroversial orders to its members for their signature, instead of having to do so in a public session. This procedure, it says, would greatly expedite the commission's case load. The request has been turned down by the Court of Appeals, Kansas City District, which said (Kansas City *Times*, 1-22-77) the request "would place the public on 'dangerous ground' if it allowed the commission to decide which cases were 'minor or noncontroversial.'"

In Ohio, a common pleas judge upheld the state sunshine law by ruling the Maple Heights school budget invalid because it was adopted in a closed session.[37] According to that state's law, budgets are not included as grounds for closed meetings.

When the Tennessee sunshine law conflicted with the Buckley Amendment of the Education Act, which prohibits disclosure of students' records and files, the court

ruled that faculty and committee meetings of the University of Tennessee College of Law must be open.[38] Chancellor Frederick McDonald ruled that in some cases the open meetings law takes precedence over the Buckley Amendment, even though the institution, as in this case, could lose federal aid ($36 million) for failing to comply with the Education Act.

In another university-related action, a Virginia circuit court judge refused to issue an injunction, requested by a Richmond *Times-Dispatch* reporter, against the 16-member Council of Presidents of Virginia's Public Colleges and Universities for holding closed meetings.[39] Judge James Sheffield said the group was voluntary with no binding decision-making powers, and therefore was not required to follow the provisions of the state open meetings law.

There are also instances where suits are filed but no court action is ever taken. In Minnesota, the former editor of the weekly Paynesville *Press* filed suit against two members of the town board and a township clerk for holding unannounced meetings to approve a controversial road construction project.[40] But a pretrial settlement was reached when the defendants admitted "unintentional" violation of the law. Each was assessed a $25 civil penalty.

Likewise, in Missouri the Columbia *Missourian* and the Columbia *Tribune* filed suits against the city council for holding at least 13 illegal closed meetings, and even though those suits are still pending, no significant action has been taken and the papers are planning to drop them.[41] The papers obtained the information they sought during pretrial discovery and the newly-elected council members stopped holding the secret sessions.

IV. Legislative Activity

The preceding judicial interpretations were generally welcomed, both the state supreme court decisions and the lower court rulings. This feeling was evident in a suit filed by the editor of the Bucks County (Pa.) *Courier-Times* because of closed sessions by the Middleton Board of Supervisors.[42] The editor said the suit was not aimed at the particular board decision on sewer projects, but rather it sought an interpretation of the new law to determine if it was the vehicle to open meetings of public bodies.

But legislative activity must come before any judicial challenges and interpretations. Advocates of the right to know frequently insist that access to information about governmental activities is guaranteed by the U.S. Constitution. Their reasoning is that the rights of free speech and free press imply the right of people to be informed about the conduct of government.

Some courts have accepted such an extension. But legislative enactment appears a much surer means of establishing a legal principle requiring open meetings.[43] As the Arkansas Supreme Court in the *Pickens* case said:

> The great disadvantage in the courts attempting to declare public policy lies in the fact that attention is necessarily focused on the particular interests of the litigants. In contrast, the legislature has the advantage of having all perspectives presented and considered in making such determinations. This determination should have been left with the General Assembly where it belongs, both as a policy decision and as a change in common law.[44]

Likewise, the Tennessee Supreme Court in the *Dorrier v. Dark* case said:

> [I]t is the Legislature, not the Judiciary that must balance the benefits and detriments and make such changes as will serve the people and express their will.[45]

Since the 1974 evaluation by Adams, considerable legislative activity has taken place in the states concerning open meetings. According to a *State Government News* survey reported in the St. Louis *Post-Dispatch* (3-26-77), significant reforms were adopted in half the states in 1976, and in the past four years, 33 state laws were either strengthened or enacted. Advance public notice is required by 37 laws, 32 require minutes and 34 provide sanctions for violations.

According to the Adams study, 47 states had open meetings laws in 1974, the exceptions being Mississippi, New York and West Virginia. Rhode Island's law provided only for administrative procedures and could hardly be called an open meetings law. At present, all 50 states have open meetings statutes. In 1976 New York and Rhode Island became the last two states to adopt sunshine laws.

A digest of state legislative action shows that in Minnesota, a very active and progressive state in the area of open meetings, legislation was defeated in 1976 that would have created large loopholes in that state's strong law. The House Governmental Operations Committee voted 16-7 to table a bill that would have allowed local governing bodies to meet behind closed doors to discuss strategy for labor negotiations, litigation, land acquisition and personnel problems. The state law also became easier to enforce in May, 1975, when a new penalty clause went into effect, assessing a $100 civil penalty for violations and requiring automatic removal from the board or agency involved for three violations. South Carolina signed a bill into law in 1976 that also provided for penalties of $100 or 30 days in jail for violations of open meetings statutes.

Governor Jerry Brown of California approved a bill in 1975 amending that state's open meetings law. Among other things, the amendment allows attorney fees to be granted to anyone successfully gaining access to an open meeting through court action. The state legislature and the governor added to the state's already extensive (at least 100 pages) law again in 1976 with legislation requiring local agencies to conduct open meetings when filling local elected position vacancies.

Maryland has had a tough time with access legislation. Adams reported only a score of one for Maryland and efforts to strengthen the law ran into much difficulty. In 1976, the state house gave approval to a new open meetings law, but the governor vetoed it because of a clause that would have voided any action taken at an illegally closed meeting. The governor then issued an executive order requiring open meetings of governmental agencies at the state level, and he urged county and local governments, which were unaffected by the order, to follow suit.

Laws passed in Michigan, Louisiana and New Jersey in 1976 strengthened openness provisions of the previous laws in those states. But in the case of Louisiana, the new law was the third attempt at revision and, according to critics, was amended beyond recognition.

New Hampshire, Kansas and Maine also took pro-

gressive steps in the right to know area by allowing the use of recording devices and cameras at public meetings. The New Hampshire law permitted any person to use recording devices (including, but not limited to, tape recorders, cameras and videotape equipment) at such meetings; and the Kansas law provided for rules designed to insure the orderly conduct of the proceedings.

V. Summary

The freedom of information movement appears to be more on the move every month, on both federal and state levels. This report has attempted to bring up to date the status of open meetings legislation on the state level. The difficulty of such a task lies in the increasing activity in this area. Perhaps the only way to be totally accurate would be to make a day-to-day check on the progress in each state.

This report began by focusing on a handful of state supreme court decisions in the past few years. Many of the decisions focused on the legislative intent of the statutes, rather than allowing the literal wording to lead to an evasion of the statute, either by access advocates or by those opposed to access. A few other decisions appeared to put the burden of proper procedure on the public when seeking access to closed meetings. Finally, the attorney-client privilege, with a warning against its abuse, was extended to open meetings, as a ground for closing the session.

A digest of lower court activity in the states indicated that an increase in the amount of court activity in this area had occurred and that when someone decided to take the judicial route, a procedure not at all conducive to media operations and deadlines, the results were most often in his favor. Many of the cases in this area involved alleged violations by city councils and school boards, common sources of news on the local level.

Legislative activity in this area was also prevalent in the past few years with many states introducing and passing new laws or amendments to existing open meetings laws. At this time, all 50 states have open meetings statutes, with New York and Rhode Island completing the list in 1976. The people's right to know has been defended and backed by state press associations, Common Cause, the Society of Professional Journalists, Sigma Delta Chi and individual publications and newsmen, all of whom have exerted increasing effort in this area in the past few years. Some of the results have been favorable, others unfavorable, as this report has pointed out.

It must be noted, however, that despite increased activity, legislative and judicial, in the area of open meetings, many frustrating situations still present themselves to reporters attempting to cover meetings of public bodies.

FOOTNOTES

1. William R. Wright II, "Open Meetings: An Analysis and a Proposal," *Mississippi Law Journal*, November, 1974, p. 1158.
2. *Ibid.*, p. 1155.
3. Douglas Q. Wickham, "Let the Sun Shine In! Open-Meeting Legislation Can Be Our Key to Closed Doors in State and Local Government," *Northwestern University Law Review*, July-August, 1973, p. 481.
4. Wright, "Open Meetings," p. 1159.
5. John B. Adams, *State Open Meetings Laws: An Overview* (Columbia, Mo.: Freedom of Information Foundation, 1974), p. 1.
6. Ernest Morgan, *Informal Methods of Combatting Secrecy in Local Government* (Columbia, Mo.: Freedom of Information Foundation, 1976), p. 2.
7. Sigma Delta Chi, The Society of Professional Journalists, *Report of the Advancement of Freedom of Information Committee* (1976), p. 21.
8. *Dorrier v. Dark*, 537 S.W.2d (1976) at 890.
9. *Ibid.* at 892.
10. *Ibid.* at 890.
11. *Arkansas Gazette Co. v. Pickens*, 522 S.W.2d (1975) at 353.
12. "College Group Must Hold Open Meetings," *Editor & Publisher*, April 16, 1977, p. 24.
13. *North Central Association of Colleges and Schools v. Troutt Brothers, Inc., d/b/a The Jonesboro Sun*, 548 S.W.2d (1977) at 826.
14. 522 S.W.2d at 355.
15. 537 S.W.2d at 891.
16. *Mayor & City Council of El Dorado v. El Dorado Broadcasting Co.*, 544 S.W.2d (1976) at 207.
17. *Ibid.*
18. *Cohen v. Poelker*, 520 S.W.2d (1975) at 52.
19. *Ibid.* at 50.
20. *Arizona Press Club v. Board of Tax Appeals*, 558 P.2d (1976) at 699.
21. *Ibid.*
22. *Ibid.* at 700.
23. *Pierce v. Lake Stevens School District No. 4*, 529 P.2d (1974) at 819.
24. *Ibid.*
25. *WTAR-TV v. City Council of the City of Virginia Beach*, 223 S.E.2d (1976) at 898.
26. *Commercial Printing v. Rush*, 2 Med.L.Rptr. 1951 (1977).
27. *Minneapolis Star and Tribune Co. v. The Housing and Redevelopment Authority of Minneapolis*, 246 N.W.2d 448 (1976).
28. *Channel 10, Inc. v. Independent School District No. 709*, 215 N.W.2d (1974) at 826.
29. 246 N.W.2d at 453.
30. "North Carolina Judge Reverses Himself after Allowing Secret Meeting of Council," *Fol Digest*, March-April, 1975, p. 3.
31. "In the States: North Carolina," *Fol Digest*, July-August, 1975, p. 3.
32. "Open Meeting Law Passes First Test," *The Arizona Publisher*, January, 1976, p. 3.
33. "Penn. Official Fined by Court for Violating State Open Meetings Law," *Press Censorship Newsletter*, April-May, 1975, p. 59.
34. "Nevada Press Wins Case to Force Open Meetings on Airport Leases," *Press Censorship Newsletter*, April-May, 1975, p. 57.
35. *Ibid.*
36. "Tenn. School Board Holds Secret Salary Meetings: Cites Teacher Privacy Needed," *Press Censorship Newsletter*, April-May, 1975, p. 60.
37. "In the States: Ohio," *Fol Digest*, September-October, 1976, p. 3.
38. "UT Plans to Appeal 'Sunshine' Law Ruling," *The Tennessee Press*, July, 1976, p. 11.
39. "Richmond Newspapers Denied Injunction Against Closed Meetings in Fol Suit," *SNPA Bulletin-News*, Nov. 15, 1976, p. 5.
40. Sigma Delta Chi, *Report*, p. 32.
41. "Missouri City Council Closes Sessions: Columbia *Tribune* Files Fol Lawsuit," *Press Censorship Newsletter*, April-May, 1975, p. 57.
42. "Penn. Official Fined by Court for Violating State Open Meetings Law," *Press Censorship Newsletter*, April-May, 1975, p. 59.
43. "Open Meetings Statutes: The Press Fights for the Right to Know," *Harvard Law Review*, April, 1962, p. 1204.
44. 522 S.W.2d at 358.
45. 537 S.W.2d at 894.